DRN-3507061

The complaint

Mr A says the advice given and the arrangements made by The Tavistock Partnership Limited (TPL), to switch his personal pensions into a Pointon York Self-invested Personal Pension (SIPP), with a discretionary fund management (DFM) arrangement with Organic Investment Management (OIM) and to invest in its high yield fund was unsuitable.

What happened

Mr A received advice from a firm called Base Financial Ltd (BFL). At the time of the events complained about it was an appointed representative (AR) of Tavistock Financial Limited (TFL). Given various dealings between different entities over time, the Tavistock Partnership Limited (TPL) has informed this Service it's responsible, for the acts and omissions of its agents. To keep things simple, I'll largely refer to TPL in my decision.

Mr A says that TPL approached him in early 2016 to offer a free pension review. He says it was something he'd already decided to do so he agreed it could look at his existing arrangements.

Mr A says he met with TPL on at least three occasions. During this time it gathered information about his objectives, circumstances and attitude to risk. It also made contact with his then pension providers to gather data on his existing provision.

Mr A's aims and objectives were recorded in the following terms:

- *Review of the existing pension plans.*
- *Arrange a strategy that helps in meeting your needs of a minimum of £24,000 per year during your retirement.*
- *Consolidation of your existing arrangements to provide certainty of affairs.*
- *Long term service to ensure your plan remains within the best position during retirement, and to assist you with the options at income withdrawal.*
- *Would like less exposure to equities, preferably avoid them but you would like similar growth.*

TPL produced a suitability report for Mr A dated 29 June 2016. In summary it recommended he should:

- Retain his defined benefit scheme as this had important guarantees and protections and provided an income from age 65.
- Transfer both his group personal pensions.
- Open a e-SIPP with Pointon York to take the funds switched from his personal pensions.
- Invest the funds in the Organic High Yield Portfolio managed by OIM.

Mr A accepted TPL's recommendations and his personal pension funds totalling around £55,000 were switched to his SIPP from Capita and Scottish Widows in November and December 2016.

TPL says that in July 2017 the Financial Conduct Authority (FCA) visited OIM, after which the DFM business chose to stop accepting new investments. TPL's directors met with one of the directors of OIM and were given assurances about its situation.

TPL notes that with effect from 26th October 2017, TFL was sold to Sanlam Partnerships Ltd (SPL). Thus BFL became its AR. This is important to an argument TPL makes about the extent of any potential liability.

In November 2017, BFL contacted Mr A to undertake an annual review. At this time the value of his pension had increased from around £54,700 to £57,700. His circumstances hadn't changed and his attitude to risk remained the same. As a result, no recommendations were made, and this was confirmed in writing to Mr A on 8th November 2017.

On 14th November 2018 the funds managed by OIM were suspended and because the model portfolios invested in these funds, this impacted on Mr A's pension. On 4th December 2018 the FCA published its Supervisory Notice regarding OIM requiring it to cease regulated activities and to write to advisers and clients by the 12th December, informing them of such.

When Mr A received notification from TPL about the status of OIM. He had several concerns about what had happened. For example, he thought the DFM targeted return of 7.5% per annum had been questionable. He thought the SIPP arrangement had been expensive and unnecessary for his circumstances. And he thought a recommendation to invest in a fund with no track record and place all his money in this had been unsuitable.

Mr A said that as a result of TPL's advice he'd made a significant loss on the capital he'd invested. And that he'd also lost out on investment growth.

TPL didn't receive Mr A's initial complaint, but after this Service provided it with a copy it rejected his case. In summary it said.

"Having reviewed all the documentation available to me I cannot conclude that the recommendation to transfer two of your pensions to the E-SIPP and to invest in the Organic High Yield Portfolio was unsuitable. The recommended investment met your risk profile and met with your objectives as detailed in the suitability report."

"I note that you transferred £54,716 to the E-Sipp in November and December 2016. A year later in November 2017 the file shows that the pension was valued at £57,695. Consequently, I do not consider that you suffered any loss during the period for which we accept responsibility."

The Investigator reviewed Mr A's complaint and upheld it. He didn't think TPL had clearly demonstrated that the switch of Mr A's personal pensions would leave him better off. He also thought it was responsible for any losses incurred on Mr A's funds until he decided to transfer his residual pot to a different provider on 30 April 2020.

TPL disagreed with the Investigator's findings and conclusions. It maintained that the initial advice had been suitable. It also said that from October 2017 SPL had taken on responsibility for BFL and its clients. It says SPL conducted a review of its 2016 advice in November 2017 and no changes were made. So, it asserts SPL is responsible for any losses from this point onwards.

As both parties didn't agree with the Investigator's view, Mr A's complaint was passed to me to review the case afresh. I issued my provisional decision in May. Neither party provided new evidence or arguments and so I see no reason to depart from my initial findings and conclusions.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr A's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr A's case?

The first thing I've considered is the extensive regulation around transactions like those performed by TPL for Mr A. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3 - which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like TPL. As such, I need to have regard to them in deciding Mr A's complaint.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

When I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch?

Each case is different, but I'd expect the switch to be in Mr A's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between his former pensions and the recommended new arrangement.

In 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching that I think is still helpful today. It highlighted four key issues it thought should be focussed on:

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in April 2014 it issued an industry alert which said:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable."

"If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole."

In addition, when considering the use of a DFM, the regulator has made clear that amongst other matters, firms need to take into account issues such as:

- Likely cost: do the overall costs justify the potential for improved performance?
- Size of funds under management: once a consumer has a moderately-sized fund, they may benefit from a model portfolio which is rebalanced automatically by a DFM ranging all the way up to bespoke arrangements for clients with larger funds.
- Investor's knowledge and experience: FCA has said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments the DFM might make.
- Level of disclosure: whether the benefits vs cost of the arrangement were actually explained to the investor in terms they were likely to (or appeared to) understand.

It's also relevant to consider whether a particular DFM was appropriate. The approach each firm takes to managing funds and interacting with the adviser and investor is different. So different DFM's might be suitable for clients in different situations. Two factors are particularly relevant in this case.

Firstly, the conduct of proper due diligence. If an adviser relied only on prepared literature, weaknesses in the DFM's operations may have been overlooked. Features that an adviser should consider in their due diligence include:

- Variation in cost structures between DFM's - some charge per transaction they make, in addition to an annual charge.
- What was the DFM's typical investment philosophy (in terms of assets they preferred), whether this was a model portfolio or not? Would those assets be appropriate?
- Whilst past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future. If it didn't have a track record this would reasonably have increased the enquiries the adviser should have made.

The regulator was clear there was a positive obligation on the adviser to carry out this research, rather than supplying the DFM with a risk rating and hoping 'all will be right in the end'. They were recommending the DFM as a solution to their client's needs and that meant 'looking under the bonnet'.

Secondly, how the DFM will specifically invest the investor's funds. Did the adviser obtain a current breakdown of assets in any proposed model portfolio, and the DFM's guidelines as to how it manages those assets? How did the adviser ensure that its attitude to risk scale mapped appropriately across to the DFM's? And if the DFM's mandate wasn't sufficiently limited, did it agree appropriate restrictions on what it was and wasn't allowed to invest in? If there was no specific agreement between the adviser and the DFM, how could it be sure that the DFM had accepted responsibility for risk-mapping the adviser's score to its portfolios?

Did TPL meet the regulatory obligations it was bound by when advising Mr A?

There are several documents relating to TPL's transaction with Mr A that are important to my consideration, these include the fact-find, the pension switch report and the suitability report.

I don't think TPL met the requirements placed on it in this case. I'll explain why.

TPL recorded that Mr A was 49 and living with a partner and had three dependent children. He was employed as an I.T Manager and was earning approximately £90,000 per year. He was said to have a net income of around £5,000 a month, with household outgoings slightly exceeding this. Mr A owned his home. This was worth about £625,000 and he had an outstanding mortgage of around £275,000. He was said to have cash reserves of £54,000 and credit card liabilities of £25,000.

Mr A had two personal pensions. He had a Group Personal Pension Plan with Capita with a transfer value of around £23,860. And a Personal Pension Plan with Scottish Widows worth around £30,860 at transfer. Both were 'paid-up' and invested.

Mr A was also a member of a defined benefit scheme with deferred benefits. The value of his annual pension *at the time of the advice* was about £6,249 per annum. And the value of these benefits would increase each year until retirement. Separately he was making contributions to a company scheme. Mr A was said to want to retire at 67 with a *household* income of £24,000.

At a basic level, I can't see evidence of modelling carried out by TPL which shows how the advice it gave him in 2016, came together to deliver his income requirements in retirement.

What was the value of his defined benefit pension likely to be when he retired? How much had he accrued in his current occupational pension and what was the outlook over the coming years? And so, what did he need to achieve with his personal pensions, which formed an important part of his overall provision, in order to achieve his stated objective for his income in retirement?

I think this analysis would've been important to his being able to take an informed decision about what to do with his personal pensions. TPL was in a good position to have analysed, tested, challenged and advised Mr A about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for a retirement income.

TPL recommended Mr A switch his two personal pensions into a Pointon York SIPP, with a DFM arrangement with OIM and to invest in its high-yield fund. There are a number of problems with its advice.

Charges

TPL charged Mr A £1,435 for its initial advice, that was 3% of his fund value.

In its suitability letter, TPL also noted that Mr A would initially be paying a little more in charges for the arrangement it was recommending. But it said access to investments that were in line with his requirements and the performance of these would prove beneficial overall.

Mr A was being charged a total of about £552 a year on his existing personal pensions. The new arrangement would mean he'd pay about £920 each year (including ongoing advice fees, a service it said was appropriate in his situation). This is an uplift in costs of around 67%. TPL calculated the new charges would equate to a reduction in yield of about 2.1%.

TPL provided analysis showing the performance of Mr A's existing personal pensions. Over the previous 5 years, before charges, his Capita pension had achieved growth of 29.3% and his Scottish Widows pension 31.7%.

The OIM high yield fund being recommended was targeting a yield of 7.5% a year. But I'm mindful of two facts here. The first was that the fund was new – there was no historical performance to indicate whether this was realistic or not. And as I've set out, it came with higher costs associated, which would've been a drag on returns to Mr A.

TPL hasn't done enough to satisfy me there was a clear potential for Mr A to be better off as a result of its recommendations, given the fees and charges he was incurring and the nature of the investment it was recommending.

Risk

Mr A completed a risk appetite assessment. The method used by TPL gave him a score of 64/100, assigning him to risk group five out of seven. TPL noted the following characteristics of people in this group:

"Making Financial Decisions - They think of "risk" as "uncertainty" or "opportunity" and are prepared to take a medium degree of risk with their financial decisions. Most have a reasonable amount of confidence in their ability to make good financial decisions and some have a great deal of confidence. They usually feel somewhat optimistic about their major decisions after they make them. When faced with a major financial decision they are usually more concerned about the possible gains…"

“Financial Disappointments - When things go wrong financially, while some adapt somewhat uneasily, most adapt somewhat easily.”

“Financial Past - They have taken a medium degree of risk with their past financial decisions but most have never borrowed money to make an investment. Most have never invested a large sum of money in a risky investment mainly for the "thrill" of seeing whether it went up or down in value.

“Investment - It is somewhat to much more important that the value of their investments retains its purchasing power than that it does not fall, more likely somewhat more important. For some, a fall of 20% in the total value of their investments would make them feel uncomfortable but for most it would take a 33% fall. In recent years, for most there have been no changes in the risk of their personal investments but for those that have changed, the changes have been mostly towards higher risk. Over ten years they expect an investment portfolio to earn, on average, from about two and a half to three times the rate from bank deposits, more likely two and a half times.”

I think the assessment TPL conducted of Mr A’s risk appetite was a reasonable starting point. Mr A wasn’t a novice in investment matters and he understood that to gain better returns he had to take some risks. He wanted to take some risk.

However, I’ve not seen any evidence to suggest Mr A was a sophisticated investor. Similarly, there’s nothing to suggest he was particularly knowledgeable about pension matters. Of course, that’s why he sought professional advice from TPL.

Overall, based on what I’ve seen, I think there are some important weaknesses in TPL’s approach on risk. For example, Mr A was said to want to move away from equities but wanted to achieve similar growth. I’ve not seen how it got to the bottom of his concerns about his existing plans which appeared to be performing well. And it’s not clear he understood the vehicle he would be invested in.

TPL explained the following about the high yield portfolio that his funds would be placed in:

“The Organic High Yield Portfolio is a new portfolio, under a year old and as such has no published performance figures. However, the Organic High Yield strategy comprises of noncorrelated and investments that are less volatile or are expected to return a higher yield than traditional investments as they do not track the market. The target yield of the portfolio is 7.5%. We have looked at the breakdown of the portfolio and the assets held within it will help to achieve your objectives.”

I think TPL needed to provide a fuller explanation of what Mr A’s pension pot was being invested in. I’ve not seen how the pros and cons of this asset type was explored with him. I note a fact sheet produced about the portfolio indicated that monies would be placed in *below investment grade* bonds. While such placements may be useful within a portfolio, there’s a question about the wisdom of investing 100% of his personal pension in such funds.

Non-investment grade bonds are generally those with a rating below Baa3 or BBB-. These can be securities of a publicly-traded company or other entity that may’ve has experienced a ratings downgrade or other negative event. It can also be debt issued as below investment grade. In addition, the bonds can cover loans made directly to companies that are not traded on public exchanges.

It’s widely acknowledged that such a vehicle requires a great deal of fundamental research and due diligence from the investor (or those acting on their behalf), not simply because of extra risk but also due to the complicated nature of the loan construction. While TPL told Mr

A it had looked at the assets in the portfolio it was recommending, it failed to inform him of such.

I note TPL did tell Mr A the portfolio it was recommending had no performance history – it was less than a year old. This added more risk into the mix. It should've been more fulsome about this. It should've set out why it considered using the product was a better option than more established funds.

It's a problem for TPL that it didn't have a handle on the investments Mr A would be making in his new SIPP. The regulator required that it took a close interest in where Mr A's funds would be placed. If the underlying investment wasn't suitable, then the advice wasn't suitable.

Mr A wasn't investing all his pension assets. His defined benefit scheme would remain intact and he was contributing to another scheme. I think the sums he was investing were significant, but that he had some capacity for loss given his overall financial circumstances and how long he had to go until retirement.

The problem for TPL, as I've mentioned previously, is that we don't know how important his personal pension funds were with respect to achieving his objectives. Did he really need to expose his funds to the risk he was taking on in order to meet his retirement income objective?

TPL had a duty to act honestly, fairly and professionally in the best interests of Mr A. And to take reasonable steps to ensure the advice it gave was suitable. I've set out my concerns about the strategy TPL recommended and arranged for Mr A.

Ongoing fund management

It doesn't appear Mr A had used a DFM previously. The concept was introduced by TPL. It said the arrangement should help yield performance and offered a wide choice of investments. It said:

"We have a panel of DFMs that we have selected from the market place and have selected from that, Organic Investment Management (OIM). The reason for this selection is that they use investments that are not correlated to the market and will tend to not be as volatile as other equivalent risk equity portfolios and should provide you with a stable return.

It needed to have conducted proper due diligence in respect of the OIM. The suitability report said the following in this regard:

"At a time when many managers are increasingly using standardised solutions to meet clients needs, Organic Investment Management construct portfolios which include alternative asset classes which pass rigorous due diligence assessment offering. OIM are a new and exciting investment house and as such we have carried out full, extensive due diligence on them that they have passed and exceeded expectations. The investment managers have many years of successful experience within the investment management industry. We speak with the business owner frequently and as such, this gives you the client, a level of personal service that is not normally available on model portfolios such as the one recommended to you."

It's difficult to understand how TPL could recommend OIM based on its use of investments not correlated to the market, which were said to be less volatile than equities and providing a stable return. I say this because not only was OIM only registered with the FCA in July 2015, as it acknowledged, the portfolio recommended was less than a year old at the time.

A key element of TPL's recommendation for Mr A to switch his personal pensions into the Pointon York SIPP appears to have been the expectation the DFM investment portfolio would perform better than his existing plan. If that's the case then it begs the question, on what that expectation was based upon?

OIM was a newly registered business. It had no track record of investment performance. Whilst past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future. If it didn't have a track record this would reasonably have increased the enquiries TPL should've made.

Unfortunately, as we know, TCL's due diligence wasn't successful in detecting issues that would emerge at OIM within a short period after the advice it had given Mr A. These culminated in the suspension of his portfolio in November 2018.

Mr A had some investment experience, but he wasn't a sophisticated investor. He had a relatively modest personal pension fund of around £55,000 which he'd built up over several years.

The portfolio TPL recommended was suspended. OIM failed as a business. As did the SIPP provider Pointon York. TPL might argue these matters of fact shouldn't be used in hindsight. And that he was afforded certain protections, such as access to the Financial Services Compensation Scheme (FSCS). But I think this would be to miss the point. Had it done more effective due diligence I think it's more likely than not it wouldn't have advised Mr A's use of OIM.

TPL hasn't done enough to demonstrate that the recommendations it made to Mr A to establish a SIPP, with a DFM facility, investing in vehicles he had no experience of, in a company with little track record and an instrument with no performance history, which also required its ongoing advice service, was suitable.

The arrangements TCL put in place were over-engineered, complicated, untested, relatively expensive and it wasn't clear they were reasonably likely to be able to produce a better return than his personal pensions.

Where does TPL's liability end and SPL's begin?

In responding to the Investigator's view TPL said:

"As previously explained Base Financial Ltd was an appointed representative of Tavistock Financial Ltd between 16th February 2015 and 26th October 2017 and so we are only responsible for their actions between these dates and consequently for any losses that may or may not have been incurred during that period."

"From 26th October 2017 Tavistock Financial Ltd was sold to Sanlam Partnerships Ltd and so any losses suffered after that date due to the activities of Base Financial Ltd will be the responsibility of Sanlam Partnerships Ltd."

"…the 2016 advice was reviewed in November 2017, when Base was authorised by Sanlam. Therefore, it is our view that Sanlam are responsible for the advice given in 2017 and any losses that may have occurred after that date."

"We remain of the view that as Mr [A] transferred of £54,716 to the E-SIPP in in November and December 2016, and a year later in November 2017 the pension was valued at £57,695, no loss occurred during the period for which we accept responsibility."

I've thought carefully about what TPL has said.

In broad terms, where a firm concludes that it may be jointly liable along with another firm for the investor's loss then *generally* the firm that gave the first advice should review the whole period (including the period after the other firm became involved) and then seek to obtain redress from the other entity, as appropriate. But where a firm believes the causal link between the advice it gave and any ongoing loss has been broken, then the first firm *may* need only consider the period up to the second advice.

I note that Mr A wasn't the instigator of changing the firm ultimately responsible for servicing his pension plan. I don't know if he even knew things had changed – his dealings remained with BFL.

More tellingly, I've reviewed information from the annual review TPL says BFL conducted in November 2017, when SPL had responsibility for Mr A's account. It says the advice provided in 2016 had been reviewed again and so that's where its responsibility for what happened ends. But I don't think it's as straight-forward as TPL suggests.

I've seen a note of the telephone conversation BFL had with Mr A in November 2017. It records there had been no changes in his circumstances. His attitude to risk was said to be unchanged. And that Mr A thought the return on his investment to this point was ok, and that he had no reason to be unhappy. The meeting outcome was recorded in a letter BFL sent to him on 8 November.

I wouldn't characterise the phone conversation BFL had with Mr A in November 2017 in the terms TPL has. It clearly wasn't a review of the advice he'd received a year earlier. But was that a failing of BFL, and therefore SPL's responsibility?

I've reviewed TPL's suitability letter from July 2016 to see what was agreed about the ongoing servicing arrangement Mr A signed up for. Helpfully, it sets out the scope of what he could expect (bolding is my emphasis):

*"**It is important that an investment of this nature is reviewed on a regular basis** to ensure it remains suitable for your circumstances. We have discussed the option of providing you with an on-going advice service and this was something you expressed an interest in…"*

*"Types of service propositions…**Bronze service** - Lower cost option, telephone advisory service, for clients with less complicated needs. Typical portfolios of £20,000. Review of needs and analysis of risk tolerance and ongoing suitability. Ongoing market research, **review report on suitability of product and provider every 2 years** and access to IFA via telephone..."*

*"**You have agreed to the Bronze servicing option** which is ordinarily charged at 0.65%. This equates to an approximate annual payment of £311 based on the amount initially invested.."*

This agreement Mr A entered into indicates that he should've expected a review report on the suitability of the product and provider TPL had recommended every two years. It would've been in November 2018 that SPL should've uncovered the problems with his arrangements. So, I think this is the point at which in theory TPL's liability would've ended.

Although my finding is a little different to that of the Investigator on this matter, I don't think it makes a material difference to the liability TPL faces. That's because the issues with Mr A's portfolio were established by November 2018. His fund was suspended, ultimately resulting in capital and investment losses, and ongoing costs arising from the pension arrangements TPL had recommended.

Of course, it is a matter for TPL if it wishes to pursue SPL for acts and omissions which it believes it was responsible for where these give rise to an element of the costs of putting things right which it now faces.

Putting things right

I'm upholding Mr A's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold The Tavistock Partnership Limited responsible for.

If TPL had provided suitable advice, I don't think Mr A would've switched his personal pensions into a SIPP, nor taken on a DFM facility and invested all his funds in below investment grade bonds. I think it's most likely his Capita pension would've remained invested in the SSGa MPF UK Equity Index pension fund. And his Scottish Widows pension in the Consensus Fund.

So, The Tavistock Partnership Limited needs to provide redress as follows.

1. Calculate a notional loss Mr A has suffered as a result of making the switch of his personal pensions

TPL should obtain the notional value of Mr A's previous personal pensions with Capita and Scottish Widows, as at the date of calculation. So, as if they hadn't been transferred to the Pointon York SIPP. It will need to obtain the value of the plans as previously invested.

TPL should then find the current (*actual*) value of his SIPP, including investments and any cash held. Concerning the valuation here – the approach to be taken is set out in step 2.

I understand Mr A moved most of the liquid funds from his SIPP in 2020. I'm not aware he made further contributions to it. After confirming the detailed position, then the value TPL obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

The adjusted, as appropriate, like for like difference between the notional value of Mr A's former personal pensions and the current value of his SIPP will be his basic financial loss that TPL needs to redress.

2. Pay a commercial value to buy any investments which cannot currently be redeemed

To close Mr A's SIPP and avoid ongoing fees, the investments need to be crystallised. If, at the date of settlement, the residual investment is illiquid (meaning it can't be readily sold on the open market), it may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. TPL should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If TPL is unable to purchase the residual investment the *actual value* should be assumed to be nil for the purpose of calculation. It may wish to require that Mr A provides an undertaking to pay it any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. TPL will need to meet any costs in drawing up the undertaking.

Had TPL done what it ought to have then there wouldn't have been a SIPP. So, it wouldn't be fair if Mr A continued to have to pay SIPP fees because of illiquid holdings preventing it from being closed. Ideally, TPL would take over any illiquid holdings, thus allowing the SIPP to be closed. But third parties are involved, and I can't tell them what to do.

So, to give certainty to all parties, if there are illiquid holdings and TPL is unable to buy them from the SIPP, then it's fair that it should pay Mr A an upfront lump sum equivalent to five years of SIPP fees (calculated using the previous year's fees). This gives a reasonable period to arrange for the SIPP to be closed.

3. Pay an amount into Mr A's pension pot so the value is increased by the loss calculated (resulting from 1 and 2) or pay him an equivalent cash sum notionally adjusted for tax.

If compensation is paid into Mr A's pension, payment should allow for the effect of charges and any available tax relief, so that he is in the same position as if he'd stayed in his original personal pension schemes.

If paying compensation into Mr A's pension would conflict with any existing protection or allowance and / or the plan is closed and TPL takes on his investments, then it should pay his compensation as a cash sum. In doing so it should make a notional deduction to allow for income tax that would otherwise have been paid.

If Mr A hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would've been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this. If Mr A is a basic rate taxpayer, the notional allowance would reduce the amount payable accordingly.

TPL must pay the compensation within 28 days of the date on which this Service informs it that Mr A accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple. Income tax may be payable on any interest paid. If TPL considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax, it should tell Mr A how much has been taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

4. Distress and inconvenience

I also think Mr A has been caused inconvenience as a result of TPL's actions. In recognition of this it should pay him £200 for its failings.

Further information

There is guidance on how to carry out calculations available on our website, which can be found by typing 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

For the reasons I've set out, I'm upholding Mr A's complaint and require The Tavistock Partnership Limited to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 June 2022.
Kevin Williamson
Ombudsman